



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

MAR 05 2007

CERTIFIED MAIL NO. 7003 3110 0006 1997 2876  
RETURN RECEIPT REQUESTED

IN REPLY: AIR-5

REFER TO: Docket No. CAA-09-2007-0021

William Garnett, Manager  
BR Hamakua, LLC, General Partner  
BR Landing, LLC, General Partner  
Hamakua Energy Partners, L.P.  
6000 Fairview Rd., Suite 600  
Charlotte, NC 28210

Dear Mr. Garnett:

Enclosed is a copy of a Consent Agreement and Final Order ("CAFO") filed pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. §§ 7401-7671q (1991) (the "Act"). The CAFO assesses against Hamakua Energy Partners, L.P., a civil administrative penalty in the amount of \$34,335 and perform a \$124,165 supplemental environmental project involving the installation of a 10-kilowatt photovoltaic system at a local school.

If you wish to discuss this CAFO, you may contact Charles Aldred, (415) 972-3986, of our Air Enforcement Office or have your attorney contact Ivan Lieben of the Office of Regional Counsel at (415) 972-3914. Thank you for your cooperation in this matter.

Sincerely,

Deborah Jordan  
Director Air Division

Enclosure

cc w/enc: Wilfred Nagamine, HDOH



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

MAR 05 2007


Wilfred K. Nagamine  
Manager, Clean Air Branch  
Hawaii State Department of Health  
P.O. Box 3378  
Honolulu, HI 96801-9984

Dear Mr. Nagamine:

Enclosed is a copy of a Consent Agreement and Final Order ("CAFO") filed pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. §§ 7401-7671q (1991) (the "Act"). The CAFO assesses against Hamakua Energy Partners, L.P., a civil administrative penalty in the amount of \$34,335 and perform a \$124,165 supplemental environmental project involving the installation of a 10-kilowatt photovoltaic system at a local school.

If you have any questions, please call me, or have your staff contact Charles Aldred of the Air Enforcement Office, at (415) 972-3986 or [aldred.charles@epa.gov](mailto:aldred.charles@epa.gov).

Sincerely,

  
Deborah Jordan  
Director, Air Division

Enclosure

FILED

2007 MAR -5 PM 3:19

REGIONAL HEARING CLERK

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 HAWTHORNE STREET  
SAN FRANCISCO, CA 94105

In the Matter of:	)	Docket No. CAA-9-2006-0021
	)	
HAMAKUA ENERGY PARTNERS, LP,	)	CONSENT AGREEMENT
BR LANDING, LLCC AND BR	)	AND
HAMAKUA, LLCC	)	FINAL ORDER
	)	
Respondents.	)	
	)	

CONSENT AGREEMENT

I.

A. Complainant, the Director of the Air Division, United States Environmental Protection Agency, Region IX, ("EPA") and Respondents, Hamakua Energy Partners, LP, BR Landing, LLCC, and BR Hamakua, LLCC, seek to settle this case initiated against Respondents under the Clean Air Act ("CAA"), as amended, 42 U.S.C. §§7401-7671q, and consent to the entry of this Consent Agreement and Final Order ("CAFO").

B. EPA initiated this civil administrative proceeding for the assessment of a civil penalty under the CAA pursuant to Section 113(d) of the CAA by issuing a Complaint and Notice of Opportunity for Hearing ("Complaint") against Respondents on September 25, 2006, in accordance with the Consolidated Rules of

Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits at 40 C.F.R. Part 22.

C. The Complaint alleges that Respondents violated the CAA by violating the conditions of their federally enforceable prevention of significant deterioration permit, including emissions limits for nitrogen oxides and requirements to continuously monitor carbon monoxide and opacity, and by failing to submit excess emissions reports to EPA on a quarterly basis, as required by the CAA's new source performance standards at 40 C.F.R. Part 60, Subparts A and GG.

D. EPA and Respondents have agreed to resolve this civil administrative proceeding by executing this CAFO.

## II.

A. For purposes of this proceeding, Respondents admit that EPA has jurisdiction over the subject matter of this CAFO and over Respondents.

B. Respondents neither admit nor deny the factual allegations, findings, or conclusions of law contained in the Complaint.

C. Respondents waive their right to request an adjudicatory hearing on any issue under the CAA addressed in the  
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Complaint and waives its right to a judicial or an administrative hearing on any issue of law or fact set forth in the Complaint or this CAFO.

D. Respondents consent to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalties under Section IV of this CAFO.

### III.

A. Within 270 days of the effective date of this CAFO, Respondents shall perform the following tasks:

1. Respondents shall install a photovoltaic system ("System") with a designed generating capacity of at least ten (10) kilowatts (direct current). This System shall be installed at the Honokaa High and Intermediate School ("School"). This System shall be designed to provide electric power to the School and provide any surplus electric power not needed by the School to the local utility grid. Any benefit and/or income from any surplus power provided to the grid shall belong to the School. Although Respondent may employ a third party contractor for installation of the System, Respondent is responsible for compliance with the terms of this Section.

2. Respondents shall incur a minimum of \$124,165 in expenditures for installation of this System.
3. Within thirty (30) days of completion of installation of the System described in Paragraph 1, Respondents shall submit supporting documentation verifying their expenditures for installation of this System. This documentation shall include, but is not limited to, copies of receipts, invoices, purchase orders and/or contracts. If the actual cost of the System is less than \$124,165, Respondents shall pay to EPA the difference between \$124,165 and the actual cost. However, if Respondents spends at least 90 percent of the \$124,165 required to be spent on the System, payment to EPA for the difference is not required.
4. Ninety (90) days after the effective date of this CAFO and every three (3) months thereafter until installation of the System described in Paragraph 1 is completed, Respondents shall submit to EPA a report which shall describe the status of the installation of the System set forth in Paragraph 1 from the time of the immediate prior report. A status report shall be required until all of the tasks for the installation have been completed and Respondents have

submitted all of the documentation required by Paragraph 3 above.

B. All submissions required to be made pursuant to Article III of this CAFO shall be sent by certified mail, with return receipt requested, to:

Chief, Air Enforcement Office (AIR-5)  
Air Division  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

C. All notices, records, and submissions required in this CAFO which purport to document compliance with the terms of this Agreement shall contain a Certification Statement signed by a responsible official. The Certification Statement should be as follows:

I certify under penalty of law that the information contained in or accompanying this document is true, accurate, and complete. As to the identified portion[s] of this document for which I cannot personally verify [its/their] truth and accuracy, I certify that, based on my inquiry of the person or persons directly responsible for gathering the information, the information is true, accurate, and complete.

A responsible official for the purposes of this provision means:

for a corporation, a president, secretary, treasurer or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or the manager of one or more

manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$35 million (in 1987 dollars when the Consumer Price Index was 345.3), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

for a partnership or sole proprietorship, a general partner or the proprietor, respectively.

D. Respondent agrees not obtain any monetary or pecuniary gain from installation or use of the System, nor generate or use any air pollutant emission reductions that result from installation or use of the System in any emissions trading, permitting, netting or offset programs, including but not limited to any Prevention of Significant Deterioration, Major non-attainment and/or minor New Source Review permitting, or permit processing.

#### IV.

A. Respondents agree to the assessment of a penalty in the amount of THIRTY-FOUR THOUSAND, THREE HUNDRED AND THIRTY-FIVE DOLLARS (\$34,335) as final settlement of the civil claims against Respondents arising under the CAA, as alleged in the Complaint.



B. Respondents shall pay the assessed penalty no later than thirty (30) days after the effective date of the CAFO.

C. The assessed penalty shall be paid by certified or cashier's check, payable to "Treasurer, United States of America," and mailed to:

U.S. Environmental Protection Agency  
Region 9  
Regional Hearing Clerk  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251

A transmittal letter indicating Respondents' names, complete addresses, and this case docket number must accompany the payment. When payment is mailed to the above address, Respondents also shall send a copy of the check and transmittal letter to:

- 1) Regional Hearing Clerk (ORC-1)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, California 94105
- 2) Chief, Air Enforcement Office (AIR-5)  
Air Division  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, California 94105
- 3) Ivan Lieben  
Assistant Regional Counsel (ORC-2)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, California 94105

Payment of the above civil administrative penalty shall not be used by Respondents or any other person as a tax deduction from Respondents' federal, state, or local taxes.

V.

A. If Respondents fail to complete the System set forth in Article III in a satisfactory manner, Respondents agree to pay to EPA a stipulated penalty in the amount of \$124,165, which shall become due and payable upon EPA's written request. However, if the System is not completed in a satisfactory manner but Respondents made good faith and timely efforts to complete the System and certify with supporting documentation that at least 90 percent of the minimum amount required to be spent on the System was expended on the System, no stipulated penalty is required. The determination of whether the project has been completed in a satisfactory manner and whether Respondents have made good faith, timely efforts to complete the project shall be within the sole discretion of EPA.

B. In the event that Respondents fail to pay the assessed penalty specified in Article IV (A) by the deadline specified in Article IV (B), Respondents shall pay a stipulated penalty of \$500/day for each day that the assessed penalty is late, which shall become due and payable upon EPA's written request. Such

failure by Respondents may also subject Respondents to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges, and nonpayment penalties as set forth in Paragraph B below. In any such collection action, the validity, amount, and appropriateness of this CAFO or the penalty assessed hereunder are not subject to review.

B. Pursuant to 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3731, Respondent shall pay the following amounts:

1. Interest: Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of this CAFO.

2. Handling Charge: Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid for any month in which any portion of the assessed penalties is more than 30 days past due.

3. Attorney Fees, Collection Costs, Nonpayment Penalty: Pursuant to 42 U.S.C. § 7413(d)(5), if Respondents fail to pay on a timely basis the full amount of the assessed penalty,

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interest, and handling charges, they shall be liable for the United States' enforcement and collection expenses, including, but not limited to, attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent (10%) of the aggregate amount of Respondents' outstanding or overdue penalties and nonpayment penalties accrued from the beginning of such quarter.

#### VI.

A. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondents' liability for federal civil penalties for the violations and facts specifically alleged in the Complaint. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in the Complaint; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not

specifically alleged in the Complaint.

B. This CAFO does not exempt, relieve, modify, or affect in any way Respondents' duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

C. The provisions of this CAFO shall be binding on Respondents and their officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

D. This document constitutes an "enforcement response" as that term is used in EPA's Penalty Policy for the purposes of determining Respondents' "full compliance history" as provided in Section 113(e) of the Act, 42 U.S.C. § 7413(e).

E. Except as set forth in Article V(B) (3) above, each party shall bear its own costs, fees, and disbursements in this action.

F. This Consent Agreement constitutes the entire agreement between the parties resolving this matter arising under the CAA.

G. In accordance with 40 C.F.R. §§ 22.18(b) (3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional

Administrator, is filed.

H. The undersigned representative of Complainant and the undersigned representatives of Respondents each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

I. Execution of this CAFO and compliance with the requirements set forth herein shall constitute full settlement and satisfaction of all civil claims arising from the Complaint.

J. Respondents and EPA agree to the issuance of the Final Order that follows.

K. EPA and Respondents consent to execution of this CAFO without further notice.

FOR RESPONDENTS,

Date: 2-16-07

By: HAMAKUA ENERGY PARTNERS, L.P.,

By BR LANDING, LLC  
(Individually and as Partner)

By *Mark D. Segel*  
Its President

BR HAMAKUA, LLC

By *Mark D. Segel*  
Its President

FOR COMPLAINANT, EPA REGION IX

Date: 3/5/07

By:

Deborah Jordan  
for Director, Air Division  
U.S. ENVIRONMENTAL PROTECTION


AGENCY, REGION IX



FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (Docket No. CAA-9-2006-0021) be entered. Respondents shall pay a civil penalty in the amount of THIRTY-FOUR THOUSAND, THREE HUNDRED AND THIRTY-FIVE DOLLARS (\$34,335) and perform the project set forth in Article III of the Consent Agreement according to the terms set forth in the Consent Agreement. This Consent Agreement and Final Order shall become effective upon filing.

Date: 3.15.07

  
Steven L. Jawgiel  
Regional Judicial Officer  
U.S. EPA, Region IX

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LP, BR Landing, LLC and BR Hamakua, LLC,  
Docket No. CAA-9-2006-0021

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing Consent Agreement and Final Order was hand delivered to:

The Regional Hearing Clerk  
United States Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

and that a true and correct copy of the Consent Agreement and Final Order was placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Hamakua Energy Partners, L.P.  
William Garnett  
Manager  
6000 Fairview Road, Ste. 600  
Charlotte, NC 28210  
Certified Mail Number: 7003 3110 0006 1997 2876

Dated: 11/01/07

By: [Signature]

Danielle Carr  
Regional Hearing Clerk  
U.S. Environmental Protection Agency,  
Region IX